

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213

COMMENTS OF
KMC TELECOM, INC.

KMC Telecom, Inc. ("KMC"), by its attorneys, hereby submits these reply comments in response to the Commission's *Public Notice* in the above-captioned proceeding.¹ The *Public Notice* invites interested parties to comment on the issues identified by the United States Court of Appeals for the District of Columbia Circuit, in *United States Telecom Association v. FCC*,² in which the Court vacated parts of the Commission's *Third Report & Order* implementing the Communications Assistance for Law Enforcement Act ("CALEA").³ Of particular concern to KMC is the impact the current September 30, 2001 deadline may have on ratepayers due to annual budgetary constraints on telecommunications service providers as discussed more fully below.

I. Introduction

KMC is a facilities-based local and interexchange telecommunications provider. KMC and its affiliates are currently building high-speed, high-capacity advanced fiber optic networks

¹ *Public Notice, Commission Seeks Comments to Update the Record in the CALEA Technical Capabilities Proceeding*, DA 00-2342 (Oct. 17, 2000).

² 227 F.3d 450 (D.C. Cir. 2000).

³ *In the Matter of Communications Assistance for Law Enforcement Act, Third Report & Order*, 14 FCC Rcd 16974 (rel. Aug. 31, 1999)(hereinafter "*Third Report and Order*")

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to provide various services to business customers, including local and long distance voice and data services. Therefore, KMC is a “telecommunications carrier” as defined in Section 102(8) of CALEA.⁴ KMC has participated in the Federal Bureau of Investigation (“FBI”) Flexible Deployment program and will be directly affected by the outcome of these proceedings.

II. The Commission Must Consider Cost-effective Methods When Promulgating CALEA Requirements and Deadlines.

On September 1, 2000, the Commission issued a *Public Notice* requesting comment on suspending the September 30, 2001 deadline for implementation of six “punch list” capabilities and a CALEA-compliant packet-mode communications capability established by the *Third Report and Order*. Although the comment period in that proceeding expired on September 15, 2000, the Commission has yet to act on CTIA’s initiating petition.⁵ Meanwhile, most carriers, including KMC, are finalizing their annual budgets for 2001, in which they must factor-in the consequence of the Commission extending or refusing to extend the September 30, 2001 deadline.

Currently, telecommunications carriers are forced into the costly position of budgeting for the implementation of a CALEA-required facilities upgrade, which has been partially vacated, and thereby allocating limited company resources away from business operations for interim modifications that will likely require additional upgrades upon issuance of the Commission’s remand order. Such increased costs may ultimately be passed through to ratepayers. Under the current remand proceeding, the Commission must “minimize the cost of such compliance on residential ratepayers” and utilize “cost-effective methods” to implement

⁴ 47 U.S.C. § 1001(8)(A).

⁵ *Petition to Suspend Compliance Date*, filed by the Cellular Telecommunications Industry Association (“CTIA”), CC Docket No. 97-213 (filed Aug. 23, 2000).

CALEA capability requirements.⁶

KMC agrees with those commenters who submitted that this proceeding presents the Commission an opportunity to consider how the unnecessary allocation of limited resources may affect costs to ratepayers.⁷ KMC submits that the Commission should take this opportunity to extend the original “punch-list” item implementation date to June 30, 2002. Such an extension will allow sufficient time for all carriers to implement whatever items are ultimately required by the FCC and, more importantly, budget such modifications in a cost-effective manner.

If the Commission should find that an industry-wide, blanket extension is inappropriate, KMC submits that, consistent with the FBI’s Flexible Deployment initiative, and pursuant to Section 107(b) of CALEA,⁸ the Commission commit to granting reasonable extension requests of the September 30, 2001 deadline. In some instances carriers may have to amend their Flexible Deployment Plan to schedule a later date for the implementation of the second set of CALEA requirements. KMC submits that the Commission afford carriers an opportunity to file such amendments with the FBI for its support and approve such amended petitions for extensions of the September 30, 2001 deadline.

⁶ *USTA v. FCC* at 457.

⁷ *See, e.g.*, Comments of AT&T Corp., filed Nov. 16, 2000 at 13-14; Comments of BellSouth Corporation, filed Nov. 16, 2000 at 21-22; Comments of the Cellular Telecommunications Industry Association, filed Nov. 16, 2000 at 25-26; Comments of Cisco Systems, Inc., filed Nov. 16, 2000 at 1-7; Comments of the Telecommunications Industry Association, filed Nov. 16, 2000 at 4; Comments of the United States Telecom Association, filed Nov. 16, 2000 at 14-15.

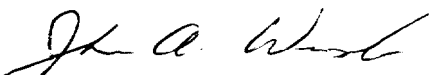
⁸ 47 U.S.C. § 1006.

III. Conclusion

For reasons stated in this Reply, KMC respectfully requests the Commission adopt an industry-wide extension from September 30, 2001 to June 30, 2002 of the CALEA compliance date for implementation of those “punch list” items the Commission ultimately deems necessary. In the alternative, KMC requests that the Commission formally acknowledge that it will accept and grant reasonable extension requests of the September 30, 2001 deadline.

Respectfully submitted,

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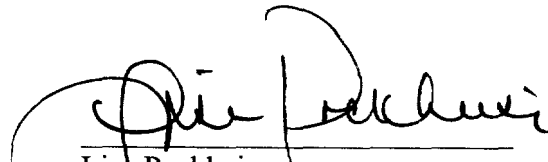
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